EXHIBIT A

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EXHIBITS 1 - 11

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

No. 04-11109 RGS

- -

LEXINGTON INSURANCE COMPANY and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA,

VIRGINIA SURETY COMPANY, INC.,

Plaintiffs

vs.

VIRGINIA SURETY COMPANY, INC.,

Defendants

- -

RULE 30(b)(6) DEPOSITION OF LEXINGTON INSURANCE COMPANY

BY AND THROUGH WILLIAM R. EDDOWS, ESQUIRE

Thursday, June 8, 2006 10:05 a.m

Mintz Levin

One Financial Center, Boston, MA 02111

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testifying on behalf of both companies, as well? Do you know?
MR. COHEN: Yes.
BY MR. BLUTE:
Q. Could you tell me what you've done to prepare for today's deposition?
A. I met with Mark a couple of weeks ago, just prior to when this depo was originally scheduled, reviewed the deposition notice and some of the pleadings in the case.
Q. Had you had any involvement in the case prior to that?
A. On a monitoring level, yes.
Q. All right. In connection with the facts underlying the case, these program policies and post program policies, were you involved at all with that work at that time?
A. No.
Q. Do you know why you were designated to testify, as opposed to somebody else?
MR. COHEN: Objection.
A. Not specifically.
Q. Okay. Do you have personal knowledge of any of the subject matters listed in the notice that

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you're testifying on today?
A. Yes. In my position as claims counsel, I think I have personal knowledge of -- probably more personal knowledge than others in the company would of the broad array of subjects spelled out in the deposition notice.
Q. Did you review any documents in preparation for the deposition?
A. I reviewed the notice and pleadings, and I believe that was it.
Q. Did you review any insurance policies?
A. I've seen some of the policies in the past.
Q. Okay. Did you have discussions with any other Lexington employees in connection with your preparation for this deposition?
A. No. Just in passing and actually talking about the fact that it was scheduled.
Q. Okay. And how about employees of National Union Fire Insurance Company?
A. No.
Q. Did you do anything else to prepare for the deposition?
A. No.

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Q. Were you involved at all in the collection of documents to produce in response to the document requests that we submitted in this case?
A. No.
Q. Could you tell me what the relationship is between Lexington Insurance Company and National Union Fire Insurance Company, if any?
A. They are both sister insurance companies of American International Group.
Q. Are they in different lines of business?
A. Lexington is an excess surplus lines company. National Union is an admitted carrier.
Q. And could you just describe what an admitted carrier and what a surplus lines carrier is?
A. An admitted carrier is a carrier admitted to do business in various states and has to comply with the rules and regulations that apply to admitted carriers. An excess, surplus carrier would be considered non-admitted, and separate rules apply in instances such as that. There is a difference between what forms have to be preapproved and things like that. I don't know all of the differences, but that is the main one.
Q. All right. In terms of the types of

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insurance policies that Lexington sells and National Union sells, and, by the way, just for ease, if I refer to it as National Union or NUFIC, can we agree that is National Union Fire Insurance Company?
MR. COHEN: Sure.
A. Yes.
Q. In terms of the types of insurance policies that are issued or underwritten by Lexington and NUFIC, are there any differences?
A. No.
Q. Are they all in the same lines?
A. Pretty much.
Q. Does Lexington write primary general comprehensive general liability insurance or commercial general liability insurance?
A. Yes.
Q. And it writes excess policies?
A. It does.
Q. Does NUFIC write primary commercial general liability coverage?
A. Yes.
Q. And does it write excess policies, as well?
A. I believe so.

Q. And NUFIC and Lexington are sister companies within the AIG corporate group?
A. That is correct.
Q. In this case, some of the policies were issued by NUFIC and some were issued by Lexington. Do you know why that was the case?
A. I can't give you all of the specifics, but Lexington was approached to initially provide the coverage that was initially going to be provided to AIMCO, as I understand it. At some point, and I don't know where the request came from, but a request apparently was made to use an admitted carrier to issue the policies, as opposed to an excess surplus, that being Lexington. So, that is why National Union became involved.
Q. And the switch, there was a switch at some point from NUFIC to Lexington policies. Do you know why that switch took place?
A. As I understand it, when the "program" was cancelled, then at that point some policies were issued on National Union paper, and some were issued on Lexington paper.
Q. And any particular reason why one would be issued on National Union versus Lexington?

A. I can't give you the specifics on that.
Q. Do National Union and Lexington use the same policy forms?
MR. COHEN: Objection.
Q. Let's start with --
MR. COHEN: They probably each issue hundreds of different types of policies, so --
Q. Let's just start with commercial general liability insurance policies. Let's start with primary policies. Do you know if NUFIC and Lexington use the same forms?
A. They may, but I would say that both companies extensively use manuscript forms.
Q. As well as the standard forms?
A. That's correct.
Q. And is that also true with the excess insurance?
A. Yes.
MR. COHEN: Just a couple of points.
MR. BLUTE: Sure.
MR. COHEN: One is I wanted to tell the stenographer AIMCO is A-I-M-C-O, all caps, and the second, just as point of clarification, by "the standard forms," are you talking about the ISO forms?

Q. ISO. Did you understand ISO, Insurance Service Offices?
A. Yes.
Q. So, in terms of preparation for deposition, you spoke to counsel. You spoke to in passing some people at Lexington, reviewed some of the pleadings. Anything else that you did in preparation for today's deposition?
A. No.
Q. Do you believe that you are prepared to testify as to the company's knowledge as to the matters that you're designated to testify on?
A. Yes.
MR. BLUTE: Mark this as the second exhibit, which is a copy of the Plaintiff's Amended Complaint.
(Plaintiff's Amended Complaint marked Exhibit 2.)
Q. I've marked as the next exhibit the Amended Complaint in this case. Have you read that complaint before?
A. I have.
Q. Okay. Could you turn to Page 8 of the exhibit, Exhibit 2. If you look at the first

paragraph -- sorry, Paragraph 8 on Page -- I misspoke. If you turn to Page 3, Paragraph 8, in Paragraph 8 it states, "Beginning in May of 2000, National Union began participating with an insurance broker, National Program Services, Inc. or NPS in providing certain excess general liability insurance policies to various real estates owners and property managers who were members of the National Coalition of Property Owners and Managers/Insurance Purchasing Group Association."
Let me ask you this: Prior to May, 2000, had NUFIC or Lexington, to your knowledge, done work with National Program Services?
A. I don't know for sure.
Q. Do you know whether either Lexington or NUFIC had any written agreements with National Program Services concerning the National Coalition of Property Owners and Managers Insurance Purchasing Group Association program?
A. I don't.
Q. Prior to the May, 2000, participation in this program, can we just for shorthand use "program" to refer to the National Coalition of Property Owners and Managers Insurance Purchasing Group Association policies?

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A. Yes.
Q. And what, exactly, was the program that National Union began participating in in May, 2000?
A. Well, as I explained earlier, we were initially approached to provide insurance to AIMCO, which is a specific insured which has, as I understand it, thousands of different properties all over the country.
Then at some point there was a proposal to increase the scope to provide coverage to the National Coalition of Property Owners, which would be a much larger group, representing various insureds.
Q. So, this would be sort of an established program, where members of this organization could get their insurance through National Union?
A. I don't know if it's an established program. It's an established group.
Q. Group. Right. Is that something that Lexington and NUFIC do in the ordinary course of business? In other words, have arrangements with specific groups?
A. Lexington and National Union would provide coverage to either individual insureds or, you know, a group of insureds represented by such an entity.

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Certainly.
Q. But, this type of program, where you have an organization and its members are getting insurance through National Union or Lexington, is that something that is done fairly regularly?
A. Certainly.
Q. And do you know who at AIMCO approached Lexington, or who on behalf of AIMCO?
A. I understand that the initial broker might have been a gentleman by the name of Rob Dowd.
Q. And who is Mr. Dowd affiliated with?
A. That, I'm not sure. I just remember he was the insurance broker, as I understand it.
Q. Do you know the name of his company?
A. I don't.
Q. Prior to that initial contact, do you know whether Lexington or NUFIC wrote insurance for the National Coalition of Property Owners and Managers Insurance Purchasing Group Association? In other words, was this a new program?
A. I'm not aware that they did.
Q. It says in Paragraph 8 that you began, Lexington began participating -- excuse me, National Union began participating with an insurance broker,

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National Program Services, Inc., NPS. Do you know whether Mr. Dowd worked for NPS?
A. I don't believe so.
Q. Do you know where Mr. Dowd was based?
A. No.
Q. Do you have any idea what state he was living in or working in?
A. I do not.
Q. What is National Program Services, Inc. or NPS?
A. As I understand it, NPS was Virginia Surety's managing general agent.
Q. Did National Program Services, Inc., do you know -- strike that. Do you know if NPS had any role in connection with the program?
A. I'm sure it had some role in the program. I can't tell you specifically more than that. You'd have to rephrase the question.
Q. Did Lexington or NUFIC have any agreements with National Program Services, Inc.?
MR. COHEN: You already asked that, but go ahead.
A. I don't believe so.
Q. Is there any affiliation at all between

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Lexington, NUFIC and NPS?
A. Not that I'm aware of.
Q. Did NPS act as a broker in the placement of policies on behalf of insureds with NUFIC or Lexington?
MR. COHEN: Objection.
A. I don't believe so.
Q. Okay. It states in Lexington and NUFIC's complaint that National Union began participating with an insurance broker, National Program Services, Inc. What does that mean, "began participating with an insurance broker, National Program Services, Inc.?" What was the nature of that participation?
A. They began participating in what was originally going to be the AIMCO coverage and then was expanded to the NUCUPO coverage, what we've agreed to refer to as the NUCUPO program.
Q. And when it states in the complaint that NUFIC began participating with an insurance broker, National Program Services, Inc., what was the role of National Program Services, Inc., as you understand it with respect to Lexington and NUFIC?
A. Again, my understanding was they were Virginia Surety's managing general agent.

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Q. You don't know whether they placed any insurance policies with NUFIC or Lexington?
A. I don't believe they would have done so directly.
Q. Do you know whether National Program Services collected any premiums for NUFIC or Lexington?
A. I believe they did.
Q. And in what capacity would they be doing that?
A. I would assume in their capacity as managing general agent.
MR. COHEN: For Virginia Surety?
A. For Virginia Surety.
Q. Why would a managing general agent for Virginia Surety be collecting premiums for Lexington and NUFIC?
A. I'm not sure, but I'm aware based on subsequent events that is apparently what the arrangement was.
Q. Do you know who at Lexington or NUFIC, I guess in the initial stages NUFIC, was involved in setting up that arrangement?
A. Not specifically.
Q. Are you aware of any other instances where

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NUFIC or Lexington participated in such an arrangement?
A. No.
MR. BLUTE: Let me mark as the next exhibit the Lexington Insurance Company's Answers to Virginia Surety's First Set of Interrogatories.
(Lexington Insurance Company's Answers to Virginia Surety's First Set of Interrogatories marked Exhibit 3.)
Q. If you could review the answer to Interrogatory No. 3, which is on Page 5.
(Witness complies.)
Q. It states in part in the answer to Interrogatory No. 3 that Lexington's understanding is that NPS acted in some sort of representative capacity on behalf of the insureds with respect to the program policies, as evidenced by the fact that NPS provided lists of insured locations under the National Union and Virginia Surety policies. NPS also collected premium payments and remitted them to National Union on behalf of the insureds. Is that your understanding?
A. It is.
Q. All right. And was that something that was done unilaterally by NPS or was that done with the agreement, with the knowledge and agreement of

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Lexington and NUFIC?
A. No. I'm sure it was done with the knowledge and agreement of both Lexington and National Union.
Q. And do you know who at Lexington, in this instance at the beginning of the program, do you know who at NUFIC would have been involved in setting up this procedure for collecting premiums and getting lists of insured locations?
A. I would think Charles Messery or others at the Risk office involved would have been involved in that.
Q. Do you know whether Lexington or NUFIC compensated NPS in any way?
A. I don't know.
Q. Again, looking at answer to Interrogatory No. 3 on Page 5 of Exhibit 3, there is a listing of individuals, who were involved in obtaining the policies issued by NUFIC and/or Lexington to members or former members of NCOPO, which is the program. Do you see that list of names?
A. I do.
Q. Let's just run through it. The first is Charles Messery, M-E-S-S-E-R-Y. Who is Charles

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Messery?
A. Charles Messery was the person the risk specialist's office, Risk Specialists of New York, who worked on this program.
Q. Was Mr. Messery involved from the outset, as far as you know?
A. I believe he was.
Q. Was he the principal contact between, of Lexington -- was he the principal contact on behalf of NUFIC with respect to the program policies?
A. Yes.
Q. You mentioned a risk specialist's office?
A. That's correct.
Q. Is that an organization?
A. It is.
Q. And what is the title of that organization?
A. I believe it's Risk Specialists Companies of New York.
Q. And is Risk Specialty Companies of New York an affiliate of AIG?
A. Risk Specialists.
Q. I'm sorry, Risk Specialists of New York an affiliate of AIG?

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such a program work more efficiently.
Q. And just describe generally what those ways are.
A. Well, with the true program policy, as I understand it, there is one master program policy issued, and then for all of the participating insureds in that program there would be individual certs, certifications numbers issued, corresponding to an individual policy for each of those participants.
Q. And so you said you'd have one policy, and then numerous insureds essentially listed on that policy?
A. That's correct.
Q. All right. And where -- in order to account for that or to manage that type of work, is that at both Lexington and NUFIC are there people who do that?
A. Yes.
Q. And who was involved with respect to this program in that capacity?
A. The Risk office.
Q. The Risk Specialists?
A. The Risk Specialists office was involved as the surplus broker.

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Q. Anybody else that you know of?
A. There would have been communication with Lexington's home office with the Risk office, as well.
Q. Who at Lexington's home office would have been communicating with Risk Specialists about a program policy?
A. I can't tell you in general. My understanding as to this particular program was that an individual by the name of Joe George may have been involved.
Q. What is Mr. George's position?
A. Mr. George was an underwriting manager at Lexington, has since left the company, I believe a couple of years ago now.
Q. Where does Mr. George work now? Do you know?
A. I don't know.
Q. Was he based in the Boston office of Lexington?
A. He was.
Q. And what was his position, title?
A. I don't know his specific title at the time. He was some manager in underwriting.
Q. Was there a sort of a top level management

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person who had to approve participation in a program like this?
A. Underwriting in Boston would have to sign off on this proposal being brought to them by the Risk office.
Q. How about with respect to NUFIC, who would handle NUFIC?
A. In this instance, it was simply a situation of Lexington utilizing NUFIC's admitted paper.
Q. Okay.
A. In this instance, it was applied to Lexington's own profit center, so it would have been the Lexington line of management dealing with the NUFIC policy.
Q. Okay. So, essentially this was a Lexington program, but at least in the first instance, you used NUFIC paper, because it was an admitted carrier?
A. That is correct.
Q. Okay. Does NUFIC have employees?
A. Oh, yes.
Q. So, it's a separate company, operating company?

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A. It is.
Q. Okay. But, the decision makers with respect to this program would have been Lexington?
A. That's correct.
Q. Does Mr. Messery's group, Risk Specialists Company do work with both NUFIC and Lexington?
MR. COHEN: I think you may have already asked that, but go ahead.
MR. BLUTE: Possible.
A. I believe they would have primarily done work with Lexington, but as in situations like this, I have to believe this wasn't the only time that a situation like this arose.
Q. Let's go down a list of names on the answer to Interrogatory No. 3. There is Rob Dowd. Who is Mr. Dowd?
A. As I think I mentioned earlier, Rob Dowd, I believe, was the insureds' broker, who made the original approach to AIG.
Q. Have you ever met Mr. Dowd?
A. I have not.
Q. Have you ever spoken to Mr. Dowd?
A. No.
Q. Do you know whether Mr. Dowd had done

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business with Lexington before?
A. I do not.
Q. I think you told me you don't know where he resides or works?
A. No.
Q. Joe Davis, who is Joe Davis?
A. Joe Davis was at the time an employee of First Capital Group.
Q. What is First Capital Group?
A. First Capital Group, I believe was the insured's wholesale broker.
Q. When you say "insured's," you mean AIMCO?
A. And/or the National Coalition.
Q. Describe for me the process of placing an insurance policy where you have a wholesale broker involved.
A. What would usually occur is a particular insured would approach a retail broker. A retail broker would then approach a wholesale broker. In an instance such as this, that wholesale broker would approach in this case our surplus lines broker, the Risk office.
Q. Is the wholesale broker typically used in placing excess policies with non-admitted carriers or

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do they provide the service regardless of whether it's admitted or not admitted?
A. They would provide the service I think regardless.
Q. And is that the sort of standard practice in the industry to use a wholesale broker, as opposed to the retail broker approaching Lexington directly?
A. I think in general it would be the practice of insured's retail brokers to go through wholesale brokers extensively.
Q. Is First Capital Group related in any way to Lexington or NUFIC?
A. No.
Q. It's not an AIG entity?
A. No.
THE WITNESS: May I take a quick break?
MR. BLUTE: Yes. Absolutely. Let's go off the record.
(A recess was taken.)
BY MR. BLUTE:
Q. Mr. Eddows, other than what you've told me, have you had any other communications with Mr. Messery?
A. No.

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Q. Concerning this matter?
A. No.
Q. Have you communicated about other matters in the course of your work at Lexington?
A. I don't think so.
Q. Okay.
MR. BLUTE: Mr. Cohen, just so the record is clear, I understand you're claiming privilege with respect to what Mr. Messery said and what was said to him.
MR. COHEN: As to any legal advice, but as to any facts he disclosed, you're free to ask about that. I'm not waiving any privilege.
Q. Is there anything -- you mentioned that you got sort of basic fact finding from Mr. Messery. Some of the things you already told us. Just if you could just summarize for me specifically what factual information Mr. Messery gave you?
Is he the one that told you about the approach from Dowd? Just sort of generally speaking the actual facts that he told you?
A. Again --
Q. As best you can remember?
A. As I've summarized earlier, the initial

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approach to AIG to provide coverage to AIMCO, followed by the subsequent proposal to then provide coverage to the National Coalition, as opposed to AIMCO, the mechanics involved in setting up the account.
Q. Anything else that you remember?
A. The policies issued, how it was physically set up, what policies were issued.
Q. Describe for me that aspect. How were the policies issued?
A. As I understand it, the initial approach was for Lexington to provide a million dollars of dollar one coverage. The response by Mr. Messery and the Risk office was that that would not be possible, and the counterproposal was a million dollars of coverage sitting over a 250,000 dollars self-insured retention.
Q. Just so I understand and it's clear on the record, the initial proposal, initial request was for a million-dollar policy in which the AIMCO -- or, excuse me, the program participants would have insurance from the first dollar; is that right?
A. Correct.
Q. And that request was rejected by somebody at Lexington. Who would have made that decision?

A. I'm not sure if Charlie would have made that decision himself or whether or not that would have been in conjunction with talking to Lexington's home office underwriting department.
Q. So, the proposal that went back was that we'll write you a million dollars coverage, but only after a $250,000 self-insured retention?
A. That's correct.
Q. Also known as an SIR?
A. Yes.
Q. You have used that logo, that short form here today. What is a self-insured retention?
A. It's a retained dollar amount which the insured first has to satisfy before there are any coverage requirements under the policy sitting above to respond by way of coverage.
Q. Okay. Do you know why Lexington, the underwriters decided that they wanted a $250,000 self-insured retention?
A. Not specifically.
Q. Are there typical rationales that, as far as you know, in terms of underwriting as to when you would want a self-insured retention or why you would want a self-insured retention?

A. In general, one possibility would be to avoid having to be involved in the handling of a very large number of small matters, which with an SIR in place would be handled within that SIR and would not involve insurance company resources to handle such small claims.
Q. So, essentially you'd be dealing with larger claims?
A. That's correct.
Q. All right. And is there, was there anything about the business, this particular business that led Lexington to have a concern about large numbers of small claims?
A. Only in that it would involve very large numbers of coverage involving very large numbers of properties located all over the country, as I understand it.
Q. Okay. Anything else about an SIR, any other reason why you'd want an SIR?
A. That's the one that comes to mind.
Q. All right. And is it your understanding that that was the reason why it was requested in this case?
A. I can't tell you specifically.

Q. All right. Mr. Messery would be the one to ask that?
A. He would.
Q. And so the proposal back to -- I assume to Mr. Dowd; is that right?
A. I don't know.
Q. Okay. The proposal back to whoever was involved on the insured side was we'll write a million with a $250,000 self-insured retention. Is that right?
A. That's correct. It may have been Mr. Dowd. It may have been First Capital. I can't tell you.
Q. Was that accepted?
A. That is ultimately the way it was, the way it was structured.
Q. And were policies issued with that structure?
A. Yes.
Q. I'll get back to that in a little bit, but let me go through these names again. Joe Davis, he was at First Capital?
A. That's correct.
Q. You mentioned him. Dennis Reilly, who is Dennis Reilly?

A. I believe he was also at First Capital.
Q. Also involved as a wholesale broker?
A. Right.
Q. So, in terms of the communications here be the entity that would approach, would have been dealing with Mr. Messery would have been the wholesale broker?
A. I believe so.
Q. And then the wholesale broker would deal with whoever the retail broker was? Is that typical?
A. Yes. Yes.
Q. Do you believe that is what occurred in this case?
A. I believe so.
Q. Have you had any discussions with either Mr. Davis or Mr. Reilly concerning this matter?
A. No.
Q. Do you know whether anyone at Lexington has?
A. I do not. I don't believe so.
Q. Have you had any written communications with either of those gentlemen concerning this matter?
A. No.
Q. In terms of the underwriting side of these policies, of the original placement of the policies,

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we've got a retail broker, a wholesale broker, Charles Messery, and then Mr. Messery, the actual underwriting is somebody within underwriting at Lexington?
A. That's correct.
Q. Does Mr. Messery, is Mr. Messery involved in the actual underwriting of the policies, the assessment of whether to accept the risk, the establishment of premium, any of those things?
A. I believe he's a trained underwriter, and he would make recommendations, but the final authority comes from Lexington's underwriting department.
Q. And the gentleman you mentioned earlier, was he the one you think made the final decision on this matter? I forgot his name.
A. Joseph George.
Q. George. Was he the one, you think --
A. To the best of my knowledge. There may have been others involved in home office underwriting, as well, but he would be the one.
Q. Would the underwriters be the one to decide what the premium would be?
A. I believe in working with Mr. Messery.
Q. Okay.
A. Yes.

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Q. And would it be the underwriters who would decide what the structure of the policy would be, in terms of the SIR and the limits?
A. Yes.
Q. Anybody else that we haven't talked about that was involved in the underwriting or placement of the program policies at the outset?
A. Not that I can recall.
Q. Prior to the placement of the first policy under the program, did anyone at Lexington, to your knowledge, have any communications with anyone at Virginia Surety Company?
A. When you say "Virginia Surety," are you including or excluding National Program Services?
Q. I'm talking about Virginia Surety directly?
A. Not that I'm aware of.
Q. Did anyone at Lexington have any communications directly with National Program Services prior to the placement of these policies underwriting?
A. I'm not positive on that, but they may have.
Q. When did Lexington first learn that Virginia Surety Company was issuing primary policies to

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insureds under this program?
A. After Lexington agreed to the structure with the million dollars of coverage sitting above the $250,000 SIR, sometime relatively shortly thereafter, I believe, they learned that the insureds, whether it was all or most of the insureds, intended to satisfy their SIR by means of a buyback to provide coverage for that $250,000 SIR.
Q. When you say "buyback," what do you mean?
A. Buying back insurance to replace what would otherwise be their own dollar one responsibility up to the $250,000. Initially, they had been seeking dollar one coverage. So, Mr. Messery and Lexington were not surprised that the insureds would then go out and buy back that coverage to try to get to the situation that they were originally looking for, which was dollar one coverage.
Q. Did National Union issue any policies in connection with this program before it learned of the existence of VSC and this buyback?
A. I can't give you the specific dates, but I believe -- I believe there would have been at least one policy issued prior to that.
Q. So, at the time the first policy was

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issued under this program, there was no knowledge of the insureds' intent to insure the SIR?
MR. COHEN: Objection.
A. No knowledge that it would specifically be done with Virginia Surety, I think is the way I would characterize it.
Q. Was there knowledge at the time the first policy was issued that there was an intent to insure the SIR?
A. Not specifically. I think, again, it would be more of an educated guess.
Q. And was there anything, to your knowledge, in any of the NUFIC policies which prohibited an insured from insuring the SIR?
A. No.
Q. Prior to issuing the NUFIC, the first NUFIC policy, did anyone at Lexington, had anyone at Lexington seen a VSC policy?
A. I don't know.
Q. Do you know when anyone at Lexington first or anyone working with Lexington or NUFIC first actually saw a VSC policy?
A. I assume you mean a VSC policy related to this program?

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Q. Absolutely. Yes.
A. Not specifically. Again, it would have been relatively soon after Lexington agreed to provide the coverage.
Q. Once Lexington and NUFIC -- Lexington in this case became aware that under this program the insureds were insuring the SIR, were there any changes made in the policies issued by NUFIC in response to that knowledge?
A. Not that I'm aware of.
Q. Do you know whether in connection with underwriting the NUFIC policies under the program, there was any discussions with Mr. Gruppuso at NPS concerning his role with respect to VSC policies?
A. I don't know that.
Q. Did Lexington or NUFIC know that NPS was a managing general agent for VSC at the time that it issued the NUFIC policies under the program?
A. I would think so.
Q. Did Mr. Messery tell you that? Do you know that that is the case?
A. I know Mr. Messery was aware that NPS was Virginia Surety's managing general agent.
Q. When did they get that knowledge?

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A. I can't tell you that specifically.
Q. Do you know whether they had that knowledge before the first policy was issued by NUFIC?
A. I can't tell that you for sure, but that is my understanding.
Q. Are you, have you ever seen policies that prohibit an insured from insuring an SIR?
A. No. Policies may have some requirements that are triggered if an insured does decide to insure the SIR.
Q. Do you know whether any of the NUFIC policies issued under this program contained any provisions dealing with the insurance within the SIR?
A. I believe there may have been a requirement for an approved TPA third-party administrator to actually administer the bought back SIR.
Q. Was that specifically in relationship, in relation to an insurer, or was it a requirement even if the insured was going to bear the SIR?
A. I'm not positive. It may apply to both. But, it certainly would apply in this instance.
Q. Is it possible for you to determine from any of the records the date on which NUFIC first

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learned of the VSC, that VSC was insuring the SIR layer?
A. I haven't seen any document or record that I recall that would give me a specific date. It would have been -- again, it would have been shortly after Lexington agreed to provide its coverage, though.
Q. Do you know how many policies NUFIC wrote before Lexington learned that VSC was insuring the SIR?
MR. COHEN: Objection.
A. I do not.
Q. Or that NUFIC wrote?
A. I don't know, because I don't know the mechanics of what was actually triggering the issuance of additional National Union policies.
Q. Do you know how many policies were issued by NUFIC under the program?
A. I only know it was several.
Q. More than one?
A. Correct.
Q. All right. And so you don't know in terms of the chronology of the placement of those policies when Lexington first learned of the existence of VSC in connection with this program?
A. No. I can't give you a specific date, no.

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Q. When did NUFIC or Lexington learn that defense costs were outside of the limits of the VSC policy?
A. Again, shortly after it put its coverage in place, they did become aware that the buyback option had been chosen and that Virginia Surety was providing that coverage.
Q. Do you know how many policies were issued before NUFIC learned or Lexington learned that VSC had issued policies with defense costs outside of limits?
A. I think it would have been the first policy.
Q. Shortly after the first policy?
A. That's correct.
Q. Do you think any other policies were issued prior to that knowledge?
A. I can't say for sure. Again, I'm not sure of the mechanics which led, which triggered issuing of additional policies. The nature of this program, the way it was set up with constantly insureds being added and subtracted was driving, as I understand it, when initial policies would be issued, but I can't give you all of the mechanics on that.
Q. With respect to at least the first policy

Q. All right. And the SIR is not referenced in the declarations, but treated as an endorsement. Is that your understanding?

A. That's right. We have been discussing the general form, itself.

Q. Yes.

A. Obviously, the endorsements would be something different.

Q. The endorsements tend to be, include things that are individual to that particular policyholder?

A. That's correct.

Q. Just so I understand this, the hazard description is "real estate owner and/or management." Is that a -- in terms of underwriting, is that sort of a standard "hazard" or risk?

MR. COHEN: Where it says "business of the named insured?"

MR. BLUTE: Under "hazard description," down about two-thirds of the way down.

MR. COHEN: Okay.

A. Yes.

Q. And the premium basis, they list the square feet and the number of units. What is a premium

basis?

A. Well, I assume, I'm not an expert on how they calculate premium, but I assume it's the factors utilized in determining pricing.

Q. In pricing?

A. Yes.

Q. Would Mr. Messery be the one to describe for me how the premium was established in this case?

A. Yes, sir.

Q. Or Mr. Brown?

MR. COHEN: Gould?

Q. I'm sorry. Gould?

A. Yes.

Q. So, if we turn over and look at the Bates -- they're Bates stamped pages, so if you'd turn over to Page ME, which is stamped at the bottom, 472?

A. Endorsement No. 1?

Q. Yes. Am I correct that Endorsement No. 1 is the part of the policy that tells you who was insured and what properties are insured?

A. It lists both insureds and locations.

Q. So, in other words, under the program you have the basic policy and then looking at Endorsement 1 you have a fairly long list of insureds and locations,

correct?

A. Yes. This is the way they made this work, similar to what I described earlier as a true program policy.

Q. Okay. On this particular endorsement, there are -- it looks like if you go to ME497, at the bottom, there are 25 entities insured by this policy?

MR. COHEN: Lower left?

Q. Very, very bottom?

A. I've got it. Yes.

Q. And they also list a number of locations?

A. That's correct.

Q. So, in other words, if I understand correctly, instead of issuing 25 separate policies to these insureds, you issue one master policy and then have an endorsement which just lists the 25 entities that are covered by this policy; is that right?

A. That appears to be the way it was done here, yes.

MR. COHEN: Some of the companies have various different entities that they own. I would just note.

Q. Right. But, in other words, the entities that are insured would be listed on Endorsement 1, as

opposed to issuing separate insurance policies to each of them?

A. That's correct.

Q. Do you know if there were originally more than 25 entities?

A. As I stated in the nature of this program, there were constantly entities that were being added and subtracted.

Q. Okay.

A. So, it's definitely a dynamic number.

Q. Endorsement No. 1 could go up or down?

A. Absolutely.

Q. Depending on?

A. My understanding is it was done on a monthly basis.

Q. Do you know whether there were particular entities that Lexington or NUFIC refused to insure?

A. I don't know.

Q. And this monthly basis change of entities, was that all done by Mr. Messery in working with the underwriters in Boston?

A. I believe it would have been Mr. Messery and Risk office personnel.

Q. And if you go over to ME00534, which is

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Endorsement No. 28, do you see that?
A. I do.
Q. To this particular policy?
A. Yes.
Q. This is titled "Self-insured Retention - Per Occurrence." Is this the document that established the self-insured retention requirement?
A. It is.
Q. And the document speaks for itself, but am I correct that essentially what this says is $250,000 must be spent by the policyholder before you have any coverage obligations with respect to that individual policyholder?
A. Yes.
Q. And down the bottom it says "$250,000 per occurrence, including expenses." What does that mean, including expenses?
A. That means indemnity and expenses combined erode the SIR amount.
Q. And just so I understand it, let's assume one of the entities listed on Endorsement 1, just take the first one listed, which is under the first named insured location, there is Summit Properties, LLC, so just let me give you a hypothetical. Summit Properties

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owns certain residential real estate, and they buy this policy to cover things that happen at that those properties; is that right?
A. That's right.
Q. Somebody gets insured at one of those properties and sues Summit Properties. That is the type of claim that this policy would respond to?
A. Correct.
Q. One of the types of claims?
A. Yes.
Q. All right. So, let's say Summit Properties get sued and the case meanders through the courts, there is lot of discovery, and eventually Summit Properties has spent $250,000 in legal fees and expenses defending the claim which is still pending. At that point, would NUFIC have an obligation to take over that defense and defend the policyholder?
MR. COHEN: Objection.
Q. Assuming there is no other coverage problems?
MR. COHEN: Assuming there is no other coverage.
Q. I'm just asking this hypothetical there is no other coverage.

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A. Again, as it states, indemnity plus expenses erode the SIR.
Q. So, if I have, if I'm Summit Properties and I spend $250,000 in legal fees, I've satisfied the SIR?
A. That's correct.
Q. All right. And is there anything that you're aware of in this policy, and you can look at it if you want, if you're aware, that limits the right of Summit in this instance to insure the SIR?
A. Not that I'm aware of.
Q. Is there anything in this policy that changes the operation of the policy based on whether or not the SIR is insured?
A. Not that I'm aware of.
Q. Do you know whether in any of the NUFIC policies that were issued in connection with this program there were any changes to the policies to deal with the fact that some of the insureds were insuring the SIR?
A. Not in the program period post program.
Q. Let's talk program period right now.
A. Okay. No.
Q. So, for the policies that were issued

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under the program, is it, I understand the language may have changed, but with respect to the issue of changing the policy to deal with the fact that the insureds might be insuring the SIR, there is nothing in the policies that deals with that. Is that right?
A. I don't think there was any change limiting that right, and I don't think the SIR endorsement, itself, was changed.
Q. Let's change the hypothetical. Let's assume that Summit Properties bought an insurance policy to cover the SIR, and defense costs were within the limits of that policy. So, at a $250,000, defense costs within limits. Do you understand that?
A. Same situation as we have here.
Q. Right. So, in that situation, if the insurance company hired the lawyer and defended Summit Properties, once $250,000 in legal fees and expenses was paid by the insurer, the Lexington or the NUFIC policy in this instance would then have to respond. Is that right?
A. I'm sorry. Could you give me the hypothetical again.
Q. Sure. The hypothetical is Summit Properties, one of the insureds under Endorsement 1

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laws, which vary from state to state, perhaps, dealing with insurance company insolvencies and also would deal with the drop down language in our policy, as well. So, I can't give you a definitive answer on that.
The bankruptcy would -- the bankruptcy wouldn't be an extraordinary event, which would have an impact on whether or not we would be required to drop down at that point.
Q. What I'm saying is not -- I'm not envisioning a drop-down situation. I'm envisioning a hypothetical in which the $250,000 has been spent and then that policy can no longer respond.
A. I am envisioning a drop-down situation in that, at that point under your scenario the insured has again bargained for and received expanded coverage, and the issue then is whether or not we would have to drop down if because of insolvency that carrier couldn't provide that expanded coverage.
Q. Is there anything in this policy that prevents dollars, that prohibits dollars being spent by an insurance company on behalf of an insured from applying against the $250,000 SIR?
A. Not that I'm aware of.
Q. Is there anything in this policy, to your

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knowledge, that refers to the VSC policy?
A. No.
Q. Have you ever seen a policy that has something called a schedule of underlying insurance?
A. Yes.
Q. What is a schedule of underlying insurance?
A. A schedule of underlying insurance would simply list any other insurance policies, which the policy, the subject policy sits on top of.
Q. So, there are situations where an excess policy will actually identify the underlying insurance policy that has to be exhausted before the policy is triggered?
A. It could be an umbrella policy. It could be a primary policy. It could be an excess policy.
Q. You've seen that before. That is fairly common, is it not?
A. I have.
Q. And it is fairly common, is it not?
A. I've certainly seen it before.
Q. And in fact in this case with respect to the NUFIC policies, do you know whether there are any policies that sat above the NUFIC policy?

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A. There was additional coverage above the NUFIC policy.
Q. And who underwrote that coverage?
A. I think it varied from time to time, but I know National Union, itself, issued an excess policy, as well.
Q. Have you ever seen the excess policy issued by National Union that have sits over this policy?
A. I'm not sure I have.
Q. Do you know whether that policy identifies the Virginia Surety policy as a primary insurance policy?
A. I don't.
Q. If the intent of this -- strike that. If AIG, in this case, Lexington, understood that the primary layer of this SIR was going to be insured, why did it not identify VSC in the policy as an underlying insurance policy?
A. The policy may have been issued prior to that point. I can't tell you specifically.
Q. It could have done that, could it? That could have been done as one possible structure of this program if that was the intent, correct?

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A. If it had known.
Q. Yes.
A. That's possible.
Q. It could have said this policy sits above a Virginia Surety policy and applies once that policy is exhausted, correct?
A. It may not have been that simple. My understanding is that whereas our policy was issued to the National Coalition, my understanding is that Virginia Surety was issuing individual policies to large numbers of the individual insureds, but not all of those insureds were doing policy buyback. So, I'm not sure what the mechanics would have been in trying to add a single document, you know, to this policy to make that happen, but --
Q. Did Lexington and NUFIC change the premium based on whether a particular policyholder was going to insure the SIR?
MR. COHEN: You're asking if Lexington took into account the --
MR. BLUTE: No. I'm asking whether Lexington in establishing the premium for an individual insured listed on the endorsement changed the premium amount for that insured based on its knowledge that it

was insured by VSC.

MR. COHEN: Meaning changed it from one thing to another?

MR. BLUTE: Yes.

MR. COHEN: After it became aware?

MR. BLUTE: Yes.

A. I believe it would have.

Q. You know that as a fact, that the policy premium would change?

A. My understanding is that at least early on, the premium calculation was based on a percentage of Virginia Surety's premium. I recall that at one point Lexington's premium was 12.2 percent of the Virginia Surety premium.

Q. How did you know the Virginia Surety premium?

A. I don't. I don't know how they were aware of that.

Q. I think you testified --

A. Through the program, they must have been aware of it.

Q. I think you testified earlier when the first NUFIC policy was issued, Lexington was unaware of VSC in particular as the insurer for this policy?

A. I think as I had mentioned to you, the physical policy may have been issued, but certainly the issue of -- while the issue of pricing was being hammered out, they became aware of the Virginia Surety participation.

Q. Did they know what the terms and conditions of the VSC policy were?

A. I would think they did.

Q. If I find an insured under the first policy that was issued, would the premium have changed?

MR. COHEN: Objection.

A. I think --

Q. Should I see a change in premium?

A. I don't -- I don't think your question reflects what happened here. I think the first policy's premium was initially calculated based on the Virginia Surety participation.

Q. You believe that at the time that this, this endorsement was issued, at least, because it contains the premium, it's your understanding when this premium was established on Endorsement 1, Lexington knew the VSC was insuring these entities?

A. I believe so.

Q. Have you ever seen a document that

reflects that?

A. I seem to recall a document reflecting again that the Lexington premium initially was calculated as 12.2 percent of the Virginia Surety premium.

Q. And what document was that? What document was that? Do you remember?

A. I don't recall offhand.

Q. Was it the underwriting files?

A. Yes. Charlie Messery would be the person to --

Q. Was that a document that was produced to us?

A. I believe so.

MR. BLUTE: Do you know by whom that -- if that has been produced?

MR. COHEN: My understanding is it has. I didn't do the production myself.

MR. BLUTE: Let's make a note to have someone call you, follow up on it.

BY MR. BLUTE:

Q. Would you agree with me that if a policy were issued without knowledge of VSC, and then subsequently Lexington learned that VSC had a policy,

that given your understanding of how these policies operate, you would expect a change in premium?

A. No. I don't agree. That would only be a valid assumption if pricing were always based, you know, solely on the SIR buyback.

Q. Would you agree with me that under Lexington's interpretation of the SIR and how it operates that you're substantially more exposed to claims when there is no insurance insuring the underlying claim?

A. Could you repeat that?

Q. Sure. Would you agree with me that the exposure, the risk undertaken by Lexington is significantly greater if the SIR is not insured?

A. Assuming that if it is insured that insurance provides different coverage, I would agree.

Q. So, if the insurance for the SIR has defense costs outside of limits, you agree with me that is a substantially lower risk for Lexington?

A. If defense is outside of limits, as opposed to inside of limits, I would agree with you.

Q. And would you expect that change in risk to be reflected in premium?

A. You would need to know what the basis

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being used to calculate the premium was. That may be a factor. I don't know.

Q. And so I understand, Lexington's position is that until Virginia Surety exhausted its indemnity limits, it had no, it has no coverage obligation. Is that right?

A. I think Lexington presumes that the Virginia Surety policy speaks for itself.

Q. But, in terms of how you understand these policies to operate, am I correct that it's your understanding that until Virginia Surety pays its indemnity limit out, you have no obligation?

A. Lexington's understanding is that under the supplementary payment section of Virginia Surety's policies, defense costs, expenses do not go towards eroding the limits.

Q. So, your understanding is that until Virginia Surety settles their case or pays a judgment of $250,000, NUFIC has no obligation?

A. That is our understanding of the coverage agreement that Virginia Surety provided to its insureds.

Q. Is there anything in your policy that says that, that you're aware of?

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A. There is not.

Q. So, in terms of how your policy operates, you're looking at the operation of VSC's policy?

A. That's correct.

Q. Okay. If that is correct, if it's correct that VSC has to pay its indemnity limit in settlement or judgment of a claim, are you aware of any instance where Lexington or NUFIC would have any obligation for defense expenditures?

A. Once the indemnity limit was used up.

Q. But, presuming the indemnity limit has to be used up either by a settlement or a judgment ending the case?

MR. COHEN: We can have more than one case in the same occurrence, right?

Q. Let's talk about a single case, a single claim. Is there any single claim that would result in your view in Lexington or NUFIC ever paying any defense expenses?

MR. COHEN: Objection under your hypothetical. We're talking about one case.

A. There could also be a situation where there was no coverage under the underlying buyback policy.

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Q. So, if we had a policy that didn't buy back the policy --

A. That policy or they had that policy in place, but it did not for whatever reason provide coverage.

Q. And Mr. Cohen mentioned a situation where you had multiple occurrences, or you had multiple claimants?

A. Multiple claimants? That is another situation.

Q. One of those settles for 250, then the other two get covered, and there are defense costs there; is that correct?

A. That's correct.

Q. Any other situations you can envision where Lexington or NUFIC would have to pay defense expenses under this view of the policies?

A. Those are the two main ones that come to mind.

Q. Let's assume that VSC settles, expends half a million dollars in defense costs and the case, eventually a judgment is eventually entered for $250,000, and VSC pays that $250,000 judgment. In your view, does Lexington or NUFIC have any obligation for

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any of the defense expenses above the 250?

A. No.

Q. You would say no?

A. Correct.

Q. So, in that case, even though VSC paid $750,000, your view is your policies have no obligation in that instance?

A. That's correct.

Q. Was there ever any discussion about listing the VSC policy in a schedule of underlying insurance in the NUFIC policies?

A. I don't know.

Q. Is there a difference between an SIR and a listing of an insurance policy on a schedule of underlying insurance?

MR. COHEN: Difference in what respect?

MR. BLUTE: In the operation of the policies?

Q. Is there a difference between saying you have a $250,000 per occurrence SIR and saying we understand there is an insurance policy that sits under ours that has a $250,000 limit? Is there any difference in the operation of your policy in that situation?

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A. You may be talking about different types of policies at that point. I'm not exactly sure what your question is driving at. If you have -- as we discussed earlier, you might have an umbrella or an excess policy, which would reference, you know, straight primary coverage beneath it and a schedule of insurance.
Q. Again, do you have any idea whether the excess policies that were issued by Lexington sit over this coverage referenced VSC as a primary carrier?
A. I don't.
Q. There was an objection to that. We should talk about it, but that policy is clearly relevant, it seems to me. The excess policy and what it says, the ones issued by Lexington and NUFIC?
MR. COHEN: My understanding is there were some.
MR. BLUTE: They weren't produced. There was on objection to them. I would just like to, you know, try to get you to rethink that, because I think they are relevant.
MR. COHEN: You're welcome to that. My understanding is the third-level NUFIC policies, policy doesn't apply to all of these insureds. There are

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other insurers that also issued policies to insureds at that level.
MR. BLUTE: Well, whatever you have. So we don't have to sit here. We'll try to get the other ones from Chubb.
MR. COHEN: I don't think we have any. NUFIC presumably would. The McCormack firm I don't believe has seen any such policies.
MR. BLUTE: You can look into it and let me know. We'll follow up on it, but I do think we're entitled to get any excess policies that Lexington or NUFIC issued.
MR. COHEN: I'm not aware of any Lexington third-layer policies. Are you, Bill?
THE WITNESS: I don't think Lexington issued any third-layer policies. I'm pretty sure they didn't.
Q. So, just going back through this line of questioning, the $250,000 SIR, under your view, essentially changes depending on what the underlying insurance says?
A. I think it would be impacted by what the underlying, the bargain between the insured and underlying insurer is.

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Q. Was Lexington or NUFIC involved at all in that bargain?
A. Not that I'm aware of.
Q. Did Lexington or NUFIC at any time have any discussions with VSC about this program, not about claims, but about the structure of this program?
MR. COHEN: VSC, itself, or --
MR. BLUTE: Let's start with VSC, itself, to start.
MR. COHEN: I assume you're talking about other than letters we got from lawyers about coverage issues?
MR. BLUTE: Yes.
BY MR. BLUTE:
Q. I'm talking about in connection with the placement of policies. Did you have any communications directly with VSC?
A. At the time of the placement?
Q. Yes.
A. I'm not aware of that.
Q. Did you have communications, written communications directly with National Program Services at the time the policies were placed?
A. I'm not aware of that.

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Q. Do you know whether Mr. Messery had any direct contact with National Program Services at the time the policies were placed?
A. I do not.
Q. The phrase you have been using about an insurance, a policy holder, who insures an SIR, you call it a buyback?
A. (Witness nodded.)
Q. Is that a term of art used in the industry or is that something that you, it's your word selection?
A. I believe it's a term that Mr. Messery would use.
Q. That a policy holder who insures within the SIR, that is a buyback?
A. It's a buyback in the sense that the policyholder was originally in this case looking for dollar one coverage, so they're basically buying back to the situation they were looking for at the beginning.
Q. Okay. Do you know how many insureds there were that did not have insurance with VSC, but did have insurance under the NUFIC policy?
A. I don't know the number.

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Q. I tried to get this earlier, but let's just hypothetically assume I have an insured, who is trying to decide whether to get the VSC policy or not, and he wants a quote from Lexington for coverage under this program as to both with and without insurance, would you expect in that instance a change, a different premium?
MR. COHEN: Objection.
Q. Or do you know?
A. I can't answer that. I would need to know what they at that point in time were basing their premium calculations on. That may be one of the factors, but I don't know for sure. I don't know what the impact would be.
Q. Okay. Mr. Messery would be the one to talk about that?
A. He would.
Q. Is there any provision in the policy that you're aware of that states that that $250,000 amount changes based on whether there is an insurance policy within the retention?
A. I'm not aware that there is.
Q. Are you aware of any regulation or restriction that would prohibit an insurance company

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from issuing a $250,000 policy with defense costs within limits?
A. That would vary from state to state.
Q. All right.
A. I understand that that is a restriction in various states.
Q. Do you know if it's a restriction in Massachusetts?
A. I don't offhand know if it's a restriction in Massachusetts.
Q. Do you know if it's a restriction in New York?
A. I don't know.
Q. New Jersey?
A. I don't. I don't know for the specific states. I just know that in a number of states, it is a specific restriction.
Q. If VSC issued a policy in a state that permitted defense costs within limits, and the defense costs eroded the policyholder's limits, would you anticipate the NUFIC policy responding at that point?
A. If that's the way the Virginia Surety policy was written, correct.
Q. Did you make any -- do you know whether

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Lexington made any, charged any different premiums based on the states where these policyholders were located?
A. I don't know that.
Q. Did AIG have to approve the VSC form that was used?
MR. COHEN: Did AIG have to approve the form?
Q. Did NUFIC have to approve the form that was used by VSC in connection with this program?
A. I don't think Lexington or NUFIC or the Risk office had any advance notice.
Q. Do you know how much Lexington has paid out or NUFIC or Lexington have paid out in lost payments under its policies in connection with this program?
A. Based on the loss runs I've seen, it's somewhere in the area of 19, 19-and-a-half million in indemnities, and maybe a little more than half a million in expenses.
Q. So, 19 million in indemnity and a half million dollars in expenses, approximately?
A. (Witness nodded.)
MR. COHEN: We did produce the loss runs.

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MR. BLUTE: The loss runs?
Q. If looking at the -- I forgot the exhibit number, but the Amended Complaint, the first paragraph says, "Lexington and National Union seek a declaration that all of their policies are 'true excess policies.'" What is a "true excess policy?"
A. True excess policy would be a policy that would be excess to any other primary coverages also available.
Q. Does a true excess policy have to identify the underlying insurance policy that it sits over?
MR. COHEN: Objection.
A. Not that I'm aware of.
Q. Do you know of any -- you said "true excess." Are there excess policies that are not true excess?
A. I think true excess is probably a legalese reference, whereas an excess policy is simply an insurance reference to differentiate between primary umbrella excess, that type of thing.
Q. I mean are there excess policies that are not true excess policies?
MR. COHEN: Objection.
A. I can't answer that. That is a legal

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question, I think.
MR. COHEN: Off the record.
(Discussion off the record.)
Q. Go back to the interrogatory answers. I don't know if you have them there, but I can read them to you. You identify a number of individuals, which you also have on the list that is Exhibit 4. The first one listed is Betty Viscione.
A. Viscione.
Q. Viscione.
A. Yes.
Q. She's the primary casualty unit manager for Lexington Insurance Company?
A. She is.
Q. What is a primary casualty unit manager's responsibilities?
A. At Lexington, we have in order to handle our primary claims, we now have three separate primary units set up to handle those claims, and Betty manages one of those units and oversees the activities of a number of examiners, who handle the individual claims that come into that unit.
Q. Of those three units, is it based on subject matter of the claims or a value of the claims?

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What is the difference between those?
A. No. They all handle various types of claims.
Q. Why three units? Just for efficiency?
A. Volume-wise.
Q. Volume?
A. That's right.
Q. What was Betty Viscione's role with respect to the program policies?
A. Again, she was the manager of that unit to which these claims came into.
Q. Who handles the claims when they come in?
A. The claims examiner to which they're assigned.
Q. Is Lexington dealing directly with lawyers, or is there a third-party claims administrator handling this on behalf of Lexington and NUFIC?
A. In this situation, York Claims is used as a claims handling entity, and Lexington oversees their activities, coordinates with them.
Q. Is York Claims Service an AIG company?
A. No.
Q. It's an independent operation?
A. It is.

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Q. Does Lexington -- so Lexington pays them a fee essentially for handling the claims?
A. That's correct.
Q. And what is it that determines whether you would use York Claims Service rather than handle the case directly?
A. I'm not sure.
Q. And you list JR Maul, unit manager, York Claims Services. Is he the person at York, who has primary responsibility for the claims under this program?
A. Yes. He would be the claims -- he similarly to the way Betty would oversee activities of examiners at Lexington in Boston, he would oversee York examiners working on this account.
Q. And Brenda Bouyer-Windley, general liability manager, Risk Specialist Company of New York, do you know what her responsibilities are?
A. I know that she is an underwriter by training, and I believe she's the custodian of the files at issue.
Q. Did she have any involvement with the placement of these policies?
A. I'm not aware one way or another.

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Q. And Ira Ladd, who is Ira Ladd?
A. JR Maul reports to Ira Ladd at York.
Q. Have you had discussions with Betty Viscione concerning this matter?
A. I'm sure from time to time I have discussed this with Betty. I know that Betty and I did discuss the deposition scheduling recently, and Betty took part in the conversations with Mr. Messery, as well.
Q. What was the most recent conversation with Mr. Messery?
A. When?
Q. Yes. Approximately?
A. Oh, a couple of months back, I would guess.
Q. I may have asked you this. Is Ganatt Associates in New York?
A. I don't know where it is.
Q. You don't know where it is?
A. No.
Q. Do you have Mr. Messery's phone number?
A. I don't. I'm sure counsel does.
Q. When claims are being handled by York, do coverage issues ever arise?

A. I'm sure they do.
Q. And who is responsible for, at Lexington or NUFIC or on behalf of NUFIC for making decisions with respect to coverage?
A. York may themselves obtain an outside coverage opinion. They would certainly consult with Betty Viscione or Lexington examiners, as well. It may obviously at York also involve conversations between examiners and supervisors there, as well.
Q. Did York have the authority to make coverage determinations itself?
A. I would think that they would need approval from Lexington.
Q. Who at Lexington would ultimately be responsible for coverage determinations?
A. My guess on this account would be Betty Viscione.
Q. Are you aware that at some point a dispute arose between VSC and Lexington concerning the operation of this program?
A. I am.
Q. Did you become aware of that dispute at the time?
A. Yes, I did.

Q. How did you become aware of it?
A. I'm sure it was brought up to me. I can't recall whether it was by Betty or Fred Owen, but it would have been brought up to me at the time that it arose.
Q. All right. And what was the nature of the dispute, as you understood it?
A. The nature of the dispute was over exhaustion of the SIR.
Q. And what was the dispute?
A. The dispute was that despite the VSC policy language, they were adopting the position for the first time that $250,000 in expenses would erode their obligation.
Q. All right. And did Betty Viscione perform an analysis of that question?
A. I would think that she did.
Q. Do you know whether she put that analysis in writing?
A. I haven't seen a written analysis by her, no.
Q. Do you know what York's opinion of that issue was?
A. I have seen correspondence from York

indicating that they disagreed with that position.
Q. That they disagreed?
A. Yes.
Q. That York, you've seen communications where York took the position, took a position consistent with VSC's position?
A. No. Just the opposite.
Q. Okay. Are you aware of anyone at work, who agreed with VSC's position?
A. No.
Q. Do you know whether work ever requested information from VSC concerning claims expenses because of the risk of the SIR being exhausted?
A. I don't.
Q. Did York make the coverage determination in this case on this disputed issue?
A. I'm sure that issue was referred to Lexington.
Q. And to Betty Viscione?
A. Certainly initially to Betty Viscione.
Q. Did Betty Viscione make a coverage determination?
A. She may have sought additional advice.
Q. All right.

A. I would think she sought additional advice from outside counsel, and maybe others in claims management, as well.
Q. Do you think she sought advice from outside counsel?
A. I believe so.
Q. Do you know who the outside counsel was?
A. I believe Mr. Cohen's firm.
Q. Do you know when that request for outside counsel assistance was made?
A. Not specifically.
Q. Was it before or after Lexington's position was communicated to VSC?
A. I can't tell you specifically the date of both of those. I'd have to review the correspondence to figure that out.
Q. Who had ultimate, who ultimately -- strike that. Who had the ultimate responsibility within Lexington for determining the answer to this coverage dispute from your perspective?
A. I'm not sure it would be one person. It would be a collective claims department responsibility to get it right.
Q. Did you make the final decision? Did you

this binder, which we've marked as Exhibit 5. Something occurred to me over lunch I wanted to ask you. If a policy holder purchased an insurance policy that had $500,000 limits, indemnity limits, rather than $250,000, is it your understanding that NUFIC and Lexington would have no obligation until that $500,000 was exhausted?

MR. COHEN: You mean the first dollar primary $500,000 policy?

MR. BLUTE: Yes.

A. Just a straight policy? It's not part of your previous hypothetical, just a straight.

Q. No. Just one of these policyholders went out and for whatever reason purchased a $500,000 primary insurance policy with first dollar coverage?

A. That's correct. I would assume that the NUFIC policy would sit above that.

Q. And that's true regardless of the amounts of limits? If I postulated a million-dollar limit, your view would be your policy wouldn't, under your SIR endorsement, you'd have no obligation until that million dollars was paid out in indemnity?

A. Again, if there were an SIR under our policy, that would get back more to the scenario you

laid out in your hypothetical, whereby that policy was retained to be an SIR buyback, since there is an SIR under our policy.

Q. Let's assume, you know, for whatever reason, a policyholder were to buy a million-dollar primary insurance policy. Is it your view that you would have no obligation for a claim until a million dollars was spent in that primary policy, in indemnity dollars?

A. Yes. It would be my opinion that the insured was expending its money purposefully to obtain expanded coverage.

Q. Did you rebate any premium to any insureds, who insured the SIR?

A. Not that I'm aware of.

Q. If you had an insured, if you had an insured that participated in this program and did not, did not insure the SIR, and then in a subsequent year decided to insure the SIR, would you expect that that premium would change? Based solely on that hypothetical, would you expect a change in premium?

A. No. Again, as I said earlier, you would need to know what the basis being used was for pricing premiums.

Q. Is the fact of insurance and the SIR, does that have anything to do with your premium?

A. It may be a factor. I'm not sure.

Q. Do you know how many insureds under the NUFIC program did not get policies from VSC?

A. I don't.

Q. Do you know whether there are any insureds who did not get policies from VSC?

A. I know there were some, but I do not know that number.

Q. Did Lexington and NUFIC anticipate at the outset that certain of the policyholders would not buy insurance to cover the SIR?

A. In general, I think the assumption was that most would.

Q. Is there anything in the Lexington or NUFIC policies issued in the program that would prevent a policyholder from insuring the SIR layer with someone other than VSC?

A. I don't think there is anything that prohibits it, whether it's VSC or anybody else.

Q. And it doesn't matter to NUFIC or Lexington what the terms of those policies are, in terms of how you price your policies?

MR. COHEN: Objection.

A. Again I believe, as I said early on, I think that was at least early on one of the considerations used in doing the initial pricing.

Q. But, wouldn't you want to know, in terms of underwriting a policy, precisely what coverage the policyholder had insuring the SIR?

A. Again, it depends at that point on what specific criteria you're using to determine what the premium will be.

Q. And you don't know the answer to that?

A. That's right.

Q. Were there any premium finance companies involved in the placement of the, or funding of the premiums for this program that you know of?

A. I don't know one way or another.

Q. If you would turn to on the -- if you look at the first NUFIC policy under the program --

A. Tab 1?

Q. Yes. It's Tab A. Is there anything in the declarations page of this policy which designates it as an excess insurance policy?

A. No.

Q. Is there anything in the policy language,

A. No. If that legal conclusion were reached, I wouldn't then want to guess on what the following conclusion would be on how you would resolve that issue.
Q. What is the purpose of having an "Other Insurance" clause in one of your policies?
A. For instance, if there were other available insurance on a layer, for instance, if you picked up an additional insured under your policy through various means, whether it's additional insured endorsement, and that party also had coverage at the same layer, that would determine how you would split most coverages.
Q. And this clause would then determine how you would split those coverages?
A. That's correct.
Q. And it says "A, primary insurance, this insurance is primary, except when B below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary, then we will share with all that other insurance by the methods described in C below."
First of all, is it your understanding, is it your position that this policy under the NUFIC, the

NUFIC policy issued was not a primary policy?
A. I don't want to try splitting hairs here. As I said earlier, it's a primary policy form with an SIR endorsement attached, which means it doesn't attach at dollar one, so as opposed to the legalese argument involving two excess, I would consider it an excess policy because of the presence of the SIR endorsement.
Q. But, this clause envisions a situation where you could have, where this policy is deemed primary and other insurance available to a policyholder is also deemed primary, correct?
A. That's correct.
Q. So, when this policy was issued, it was envisioned by Lexington and NUFIC that you could have a situation where you would have another policy that would be primary, as well as your policy being primary?
A. Yes.
Q. And in that situation, this clause permits sharing how, as you understand it?
A. It's set out in C, "Method of Sharing."
Q. And that provides that it would be contribution by equal shares, correct?
A. That's right.
Q. Assuming the other insurance permits that?

A. Yes.
Q. If it doesn't permit that, you then have a ratio based on applicable limits of insurance?
A. That's correct.
Q. Now, Subparagraph B defines the situations in which your policy would be deemed excess, correct, vis-a-vis other insurance policies?
A. That's correct.
Q. Let me just -- it says, "The insurance is excess over any of the other insurance, whether primary, excess, contingent or any other basis," and then it lists three types.
Let me just go through those and ask you a few questions. Would you agree with me that the VSC policy is not a fire insurance policy --
A. You would --
Q. -- as used in this clause?
A. You would first, though, have to make the assumption that, you know, I don't agree with, that VSC coverage is on the same layer.
Q. I understand. I didn't ask you about that assumption. I'm asking: Would you agree VSC's policy is not a fire insurance policy?
A. Yes.

Q. Would you agree with me that VSC's insurance policy is not an extended coverage policy, as used in this endorsement?
A. I would agree.
Q. Would you agree with me that VSC's policy is not a builders' risk insurance policy, as used in this endorsement?
A. It is not.
Q. Would you agree with me installation risk, that the VSC policy is not an installation risk or similar coverage for "your work" within the meaning of this policy?
A. Agreed.
Q. Would you agree with me that the VSC policy is not "fire insurance for premises rented to you or temporarily occupied by you with permission of the owner?"
A. I agree.
Q. And would you agree with me that, would you agree that the claims under the NUFIC -- under the program did not involve or do not involve maintenance or use of aircraft, auto or watercraft?
A. Not necessarily. They could potentially have involved special use of autos, I would think.

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Potentially.
Q. So, if this clause applied and if a claim arose out the maintenance, use of aircraft, autos or watercraft, this clause would in that instance deem this to be an excess insurance policy?
A. Correct.
Q. Are you aware of any endorsement which alters the "other insurance policy" language of this policy?
A. No.
Q. Do you know why this policy form was used?
A. Only that the initial request was for dollar one coverage, so it may have been the form that was being contemplated to be used, and when the issue of the SIR requirement was broached by Lexington, that it was done by means of adding the SIR endorsement.
Q. Is that your understanding or knowledge as to what happened, or is that a guess or informed speculation?
A. I think it's informed speculation as to what happened.
Q. Okay. Do you know whether any consideration was given to writing these policies on a form that would be specifically excess of the VSC

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policy limits?
A. It specifically wasn't in that -- the policy form, as I understand it, was issued prior to finding out about the VSC policy.
Q. But, there are subsequent policies issued after the company learned of VSC, correct?
A. That's correct.
Q. And do you know whether there was any consideration given under the program policies after learning of the VSC insurance policy to issuing a policy which was specifically excess of the VSC policy?
A. Not that I'm aware of one way or another.
Q. After VSC raised this issue of the relative obligations, was there any discussion of changing the policy to a different form that would be specifically excess of VSC's policy?
MR. COHEN: After what?
Q. After VSC raised the issue of the relative obligation of the parties?
MR. COHEN: After the program is over.
A. The answer is no, because the policies had lapsed at that point.
Q. So, at the time that these policies were being issued, AIG, Lexington, NUFIC were unaware of any

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issue concerning the application of VSC's policies vis-a-vis these policies?
A. Lexington assumed based on the language of the VSC policy that it understood how it would operate.
Q. When you say they assumed that, is that a guess, an informed speculation, or is that actually what happened?
A. I believe that is what happened.
Q. When you say you believe that, based on what?
A. Based on the course of dealings.
Q. And who -- did somebody tell you? Did any of the underwriters tell you that in fact was the understanding?
A. Charlie Messery, I believe, was of that opinion, yes.
Q. Did he tell you that in your discussions with him?
A. Yes.
Q. Were any policies issued, any post-program policies issued after this issue came up with VSC?
A. Yes. After the program was cancelled, there were a large number of post-program policies issued to a large number of the individual insureds.

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Q. And that was after VSC had raised the issue under the program policies of the respective obligations of the parties?
A. I don't believe so. I think that was before. Yes. That was before.
Q. Even those policies were before Lexington was aware?
A. That's correct.
MR. BLUTE: Mark that as the next exhibit.
(E-mail chain marked Exhibit 6.)
BY MR. BLUTE:
Q. Exhibit 6 is an e-mail chain that was produced to us concerning treatment of a particular claim. If you look at Page Lexington, LEXCF003081, and look at the bottom of that page, this e-mail, this e-mail chain concerns a claim which the exposure was deemed to exceed the VSC limits, and there was a question as to whether VSC should tender its limits.
Are you familiar with a practice of Lexington or NUFIC or York accepting a tender of limits by VSC in connection with the resolution of claims?
A. That would be either accepting or demanding a tender of limits, yes.

Q. And have you ever, does NUFIC or Lexington have a form that is a retained amount form, where the retained amount, insured or self-insured is expressly a dollar amount plus ALAE?

A. No. I actually think what he, what he may have been referring to is a shorthand way of saying a specific amount plus defense, in addition.

Q. Are you familiar with a -- any form? She's referring to a type of form. She says, "I thought these policies were all written on a retained amount form."

First of all, is that an expression that you've heard or used, "retained amount form?"

A. A retained limit form, correct.

Q. Where the "retained amount insured or self-insured" -- let me ask you this. Have you ever seen or are you aware of forms used by NUFIC or Lexington that refer to a "retained amount insured or self-insured?"

A. I'm sure in the past I've seen such forms. Yes.

Q. Are these pre -- forms that are, what do you call it, you know, pre-printed forms?

A. I think, as we discussed earlier, we

utilize so many manuscript forms. Whether one previously existed or one was newly drafted, I wouldn't be surprised at seeing one.

Q. Do you know whether there are any pre-printed forms that have a retained amount plus -- that expressly state that the retention is a retained amount plus ALAE?

A. Not specifically. No.

Q. All right. If you wanted to check that question, how would you go about doing it?

A. I would ask underwriting.

MR. BLUTE: All right. We'll follow up with a letter, Mark, but I'm going to request production of the forms, the self-insured retention forms used by NUFIC and Lexington, any pre-printed forms, and, specifically, any SIR form where there is a retained, where it specifically requires a retained amount plus ALAE.

MR. COHEN: Well, you know, I think as you see in this case, the forms are generally manuscript and written for a particular policy. There could be a zillion of them.

MR. BLUTE: I think if there is a pre-printed form that could be accessed, then we're

entitled to it.

MR. COHEN: I don't know if there is such a thing.

MR. BLUTE: We'll follow up with a formal request. Make this the next exhibit.

(Two-page policy document marked Exhibit 10.)

BY MR. BLUTE:

Q. Have you had a chance to review that exhibit, sir?

A. Okay.

Q. Have you ever seen this document before?

A. No.

Q. Do you know what it is?

A. I don't.

Q. Okay. The middle part of this document, if I direct you to it, it talks about the structure of the program. This is a document, by the way, produced to us by Lexington. I'm assuming it came from Lexington's files. It states that Lexington began writing the program on June 1, 2000, that master policy was issued per month; i.e., June, July, August. And was that because the addition and subtraction of insured entities in Endorsement 1?

A. It was.

Q. Do you know as the master policies issued there were ever any other changes made to the forms?

A. I don't.

Q. Was the master policy negotiated with anybody? In other words, was it the result of any negotiation or was it simply the form that was submitted by Lexington and NUFIC?

A. Well, I'm sure at some point there was negotiation and agreement on the policy form.

Q. And that would have been the wholesale broker and Mr. Massery, presumably?

A. And perhaps individual insureds, as well.

Q. It says, "Three various unrelated entities were scheduled to the policy endorsement." That is the Endorsement No. 1 we talked about earlier?

A. That's correct.

Q. "We invoiced the broker, First Capital Group, for the total premium." So, Lexington would submit an invoice for premium to the wholesale broker?

A. Yes. They would add up all of the premium for all of the individual insureds and send one total bill to First Capital.

Q. And it says, "First Capital, who was

acting as a wholesaler, was responsible for invoicing NPS, the risk purchasing group, for the total premium." So, then if I understand this correctly, First Capital would take your invoice and turn around and submit an invoice to NPS?
A. Correct.
Q. And then it says, "It was NPS's responsibility to invoice each individual insured for their portion of the premium and send us a check for the total policy premium." Is that right?
A. That is what this says.
Q. What is a risk purchasing group?
A. I'm not sure.
Q. Do you know whether this structure of the program was in place from the beginning? In other words, was this the negotiated structure at the time of the issuance of the first policy under the program?
A. This would be my understanding.
Q. So, if I understand this correctly, the premiums would be paid by the policyholders to NPS. Correct?
A. Correct.
Q. And NPS is in New Jersey?
A. I believe so.

MR. COHEN: Was.
MR. BLUTE: Was.
(Discussion off the record.)
Q. I take it from this form that at some point premiums that made it to NPS never made it up, over to Lexington; is that right?
A. I believe that's the case. By the way, do we have Page 2 to this document?
MR. BLUTE: Do we have Page 2?
MR CRAMB: I don't.
A. It may shed more light on what it is and who wrote it.
MR. BLUTE: Why don't you take a look.
(Discussion off the record.)
Q. It refers to AIG litigation against National Program Services. Are you familiar with that at all?
A. Yes.
Q. Do you know what the status of that litigation is?
A. No.
Q. Do you know whether any of the premium was ever recovered?
A. I don't know. I know a large amount was

not.
Q. Okay. Do you know what the total loss was, in terms of premium, as a result of the NPS situation?
A. It was in the millions. I know that.
Q. I may have asked you this earlier. If I did, I apologize. Where is First Capital based?
A. I don't know.
Q. Do you know where York is based?
A. No.
Q. And there is a company in the files, Cambridge. Are you familiar with a company called Cambridge?
A. Cambridge Integrated Services.
Q. Yes. What is Cambridge Integrated Services?
A. I believe they followed Countryside as the TPA for the SIR.
Q. For the SIR. And do you know where Countryside is based?
A. No.
Q. Do you know where Cambridge is based?
A. I do not.
MR. BLUTE: Okay. We'll get the other

page, and we'll add that, so the record is complete.
Q. The earlier form that, or e-mail that referred to that retained form with the retained limit plus ALAE, is it correct to state that the form that was actually used is, has ALAE; in other words, it would not be correct to say plus ALAE, right? The form that was actually used?
A. Not only that, the form that was actually used is a primary form with an SIR endorsement.
Q. Right.
A. When I hear the term "retained limit form," that may refer to an excess policy that regardless of whether or not there is an underlying primary policy or an SIR, nonetheless specifies that there is a retained limit in that policy that needs to be satisfied regardless.
Q. And does it sometimes state plus allocated loss, the adjustment expenses?
A. That, I don't know.
Q. You've never seen such a form?
A. I've seen retained limits forms, but I can't tell you one way or another whether it specifically referenced including or excluding loss adjustment expenses.

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Q. Was there any time under the program where you threatened to cancel, but didn't cancel?
MR. COHEN: The entire program or --
MR. BLUTE: Yes.
A. I'm not aware.
Q. In other words, was it sort of a deterioration relationship over time, or was it something sudden?
A. I believe once we became aware of the theft issue, it was sudden.
Q. Was there ever a time during the program where Lexington stated that it wanted to change the terms of its policies, either in terms of SIR or limit?
A. Not that I'm aware of.
Q. When the program was cancelled by Lexington, was VSC informed by Lexington of its cancellation of the program?
A. I can't tell you specifically. I would certainly assume so, since VSC was in the same boat.
Q. Now, with respect to the post-program policies, were those written on all different types of forms, or how did you go about insuring the individual policyholders once the program was cancelled?
A. Various forms. Some were National Union.

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Some were Lexington.
Q. And what would be the determining factor as to the type of form that was used with a particular account?
A. I can't answer that. That would be a question for underwriting to answer.
Q. You don't know as you sit here?
A. I don't.
Q. All right. I have in the binder, and you're free to look at them, some of the forms that were used in the post-program policies, and a number of them are what are referred to as standalone excess policies. Have you heard that phrase before?
A. I have.
Q. What is a standalone excess policy?
A. A standalone excess is a reference which would differentiate that policy from a following form excess policy.
Q. So, a standalone, following form policy would mean that you've identified an underlying policy, and you're essentially following the terms and conditions of the underlying policy?
A. That's correct. Most likely in that instance it would be an umbrella policy that you would

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be following form to.
Q. And a standalone excess would be over either a retention or a policy with different terms?
A. Yes. A standalone excess could be what I was talking about earlier, a retained limit form that we were discussing.
Q. So, you could have an excess policy sitting over retention?
A. The policy would have a retained limit in it, which would need to be satisfied regardless of whether that retained limit was other coverage or just an amount that the insured was responsible for.
Q. Does a standalone form ever have a policy below it? Or you mean, in other words -- you say it doesn't matter. Is there sometimes where you have the standalone form used where there is a primary insurance policy?
A. When I hear the term "standalone," I think of standalone excess policy.
Q. Meaning retained limit?
A. Correct. Again, standalone, as opposed to following form.
Q. I see. Could you have a situation where you have an underlying insurance policy with different

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terms and conditions than the excess?
A. So as --
Q. Would that be --
A. So as to try not to confuse you further, I equate standalone to excess, because it is the opposite of follow form, and clearly follow form would contemplate excess, because it follows form to something.
Q. Of an underlying. Right. But, I guess what I'm getting at, I understand it may have retained limits, but is there a middle ground where you have an underlying policy but perhaps the terms of the standalone are narrower, so it's called the standalone excess, because it's not following form?
A. The retained limit could either be, you know, separate coverage or just a retained limit that the insured, itself, has to satisfy.
Q. Who is Yonathan Casilla? Do you know that person, offhand?
A. It's a former employee of Risk Specialists.
MR. BLUTE: I'd like to mark that, if I could.
(E-mail chain

marked Exhibit 11.)
Q. If I direct you to the last page, there is an e-mail from Anna Tiemeyer of Hilb, Rogal and Hamilton to Yonathan Casilla. Do you see that?
A. Yes.
Q. It's concerning a policyholder called Village Green and a meeting of August 7, '03. Do you see that?
A. I do.
Q. All right. And as I understand it, the purpose of this e-mail is Mr. -- excuse me, Ms. Tiemeyer is confirming what was discussed at the meeting with Mr. Casilla, and he says, "Your policy is a standalone and not excess of the Virginia Surety policy." Do you see that?
A. I see that.
Q. Does the fact that this references a standalone and not excess tell you that this is a post-program policy?
A. No. It goes back to Page 1, I believe. In the middle of Page 1, where they say, "This is the only entity that we were providing construction coverage on our policy, but Virginia Surety is not providing the coverage for this entity."

Q. Did Lexington issue any standalone excess policies under the program?
A. They may have. I know they issued a variety of forms for the post-program policies.
Q. When you say they issued a variety of forms for the post-program policies, do you know if they issued a variety of forms for the program policies?
A. I think those were all National Union policies.
Q. And is it correct that there were no standalone excess policies issued under the program?
A. I don't believe so.
Q. Okay. Ms. Tiemeyer says, "Two, Your policy does not follow form of the Virginia Surety policy."
Is that correct with respect to the program policies, that they did not follow form of the Virginia Surety policy?
A. No. This is again going back to Page 1. This talks about this specific instance --
Q. Oh.
A. -- where it says this is the only entity that we were providing construction coverage on our

policy, but Virginia Surety is not providing the coverage for this entity.
Q. Okay. Let's talk about a different policy that did have VSC. Would you refer to your, those NUFIC policy forms as following the form of the Virginia Surety policy?
A. No.
Q. Okay. And then the -- if you look above, am I correct that Mr. Casilla has agreed with that statement of what was discussed at the meeting?
A. That's what it indicates.
Q. Thank you. Do you know if that insured, which is Village Green, whether any payments were ever made, loss or expense payments were ever made under policies issued by Lexington to Village Green?
A. I'd have to look at the loss run. I don't know, offhand.
Q. Why following the cancellation of the program was there a switch from NUFIC to Lexington in terms of the issuance of policies?
A. I can't answer that.
Q. Do you know whether it was discussed, and decision -- obviously someone decided at some point. Do you know who made the decision?

A. No.
Q. Do you know why following the cancellation of the program instead of the NUFIC form that was used in the program a standalone excess form was used in at least a number of the post-program policies?
A. I don't.
Q. Do you know of any discussion, where a decision was made as to that decision --
A. No.
Q. -- as to that issue? And would that be something that would be in underwriting, Mr. Messery?
A. Yes.
Q. Was Mr. Messery involved also with post-program policies?
A. I believe so.
Q. Were there any other -- was Mr. Messery there throughout the period that covered the program and post-program policies, or is there some other underwriter I should be concerned about?
A. I'm not aware of any other. I don't know how long he was there.
Q. Did all of the post-program policies include the $250,000 self-insured retention?
A. I believe so.

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A. Possibly Illinois.
Q. Massachusetts?
A. I don't recall.
Q. When the decision was made, did Lexington make a determination of what law it believed governed the operation of the program policies? I know you looked at a bunch of states. Did you as a company say we think this state's law governed these policies, and, therefore, X?
A. I think we reached the conclusion that several states' laws could potentially apply and that as to this issue it wasn't going to be relevant as to which one was ultimately decided. That it would come out the same.
Q. You hadn't made -- you didn't feel the need to narrow it down to a particular state's law?
A. We believed it would come out the same, in any event.
Q. Let me just review some of these things, see if you know the answer to them. In the defense -- excuse me, the answer to our counterclaim, certain affirmative defenses were asserted on behalf of Lexington and NUFIC.
One of the claims is that the claim, that

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our claim would be barred by statute of limitations and/or by laches. Anything in particular that you understood to be referred to there?
A. Yes. That there was basically no objection by VS until I believe about three years after the program began, that they were taking an interpretation different than the language contained in their policy.
Q. It's your belief that VSC's interpretation changed at some point?
A. It is.
Q. And how about, is that also the basis of the assertion of waiver as a defense, as far as you know?
A. That's correct.
Q. Is that also true with the estoppel defense?
A. Well, in general, I would think the -- through the course of dealing over that time period, they would be estopped from then asserting something otherwise.
Q. Just to be clear, is it Lexington's position that it relied on the issuance of a VSC policy with defense costs outside of limits, when it issued

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these policies?
A. As I discussed earlier, at least with respect to the first one, I believe Lexington based its initial premium calculation on that fact. Yes.
Q. On the fact of a VSC policy with defense costs outside of limits?
A. That's correct.
Q. Do you know whether that issue was ever discussed with the wholesale broker?
A. I don't.
Q. Do you know whether anyone ever discussed that with VSC?
A. I don't.
Q. Do you know what VSC's understanding was at the time it issued its policies?
MR. COHEN: Understanding as to what?
MR. BLUTE: As to the operation of the two policies in this program.
A. I think the, as set out in the supplementary payment section, it couldn't be clearer, so I would assume that they understood that.
Q. Supplementary payments in the sense of defense costs being outside of limits?
A. That's correct.

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Q. Is it your understanding -- let me ask you this: Is there any agreement between VSC and Lexington or NUFIC as to how these policies would relate to each other in this program?
A. It's hard for me to answer that question. I'm not entirely sure, as I sit here now, what VSC's latest position is on just what.
Q. My question is: Was there any contract or agreement between Lexington and NUFIC and VSC with respect to the respective obligation of the parties under this program?
A. I'm not aware of any written agreement to that effect.
Q. So, your understanding is based on pointing to the language of our policy as controlling obligations under your policy. Is that correct?
MR. COHEN: His understanding as to what? As to the priority of coverage?
MR. BLUTE: Yes.
A. That doesn't characterize my understanding. My understanding is based on the contract entered into between Virginia Surety and its insureds.
Q. How does that possibly affect your

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obligations under your contract?
A. To my --
Q. And where in your policy does it say that it does?
A. To my way of thinking --
MR. COHEN: Objection.
A. -- Virginia Surety and its insureds reached an agreement to provide additional coverage and that that is controlling.
Q. And that relieves you of your obligations under your policy?
MR. COHEN: Objection.
A. Our policy sits above that SIR. It's a different layer of coverage.
Q. What is the point of saying that defense costs apply against the SIR if in all circumstances if there is a policy you need to have indemnity limits exhausted?
A. That would --
MR. COHEN: Objection.
A. That would cover the instance where there may not be coverage under the VS policy or where VS didn't issue such a policy at all.
Q. Can you point in the program policies, can

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you point me to any language anywhere which suggests that the obligations of Lexington or NUFIC are based on another policy?
A. I would say that the additional insured -- I'm sorry, the SIR endorsement contemplates.
Q. Is there anything in the SIR endorsements that references Virginia Surety?
A. No.
Q. Is there anything in any of the endorsements that references the existence of a primary insurance policy under the 250?
A. No.
Q. Is there anything in the self-insured endorsements that discusses the impact of insuring or not insuring the SIR?
A. No.
Q. Is there anything in any of the SIR endorsements that prohibits a policyholder from insuring?
A. There is not.
Q. Is there anything in the SIR endorsements that requires a policyholder to even inform Lexington or NUFIC as to whether it has insurance within that layer?

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A. Not that I'm aware of.
(Discussion off the record.)
MR. BLUTE: Let's take a short break, review my notes. I think we'll be over or just about over.
Q. Before we go off, let me ask this question: Exhibit 4, which Mr. Cohen was nice enough to give to us, is, just to be sure, this is the listing of the people who were in the interrogatory answers?
MR. COHEN: Correct.
MR. BLUTE: And your understanding or knowledge as to who they worked for and what their role was?
MR. COHEN: Right.
(A recess was taken.)
MR. BLUTE: Excuse me one second. We have nothing else, Mr. Eddows. Thank you very much. I appreciate your time.
(Deposition concluded.)

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ERRATA SHEET

I, WILLIAM R. EDDOWS, ESQUIRE, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that it is a true and accurate record of my testimony (with the exception of the corrections listed below).

PAGE	LINE	CORRECTION
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Signed under the pains and penalties this ________ day of __________________, 2006.

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WILLIAM R. EDDOWS, ESQUIRE